

# **EXHIBIT D**

## **REDACTED PUBLIC VERSION**

**CONTAINS HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO  
PROTECTIVE ORDER**

## **Rebuttal Report of James T. Berger**

**Re: VIDEO GAMING TECHNOLOGIES, INC. v. CASTLE HILL  
STUDIOS LLC, ET AL.**

# Rebuttal Report of James T. Berger

## Re: VIDEO GAMING TECHNOLOGIES, INC. v. CASTLE HILL STUDIOS LLC, ET AL.

### I. Executive Summary

1. This report offers a rebuttal to the “Likelihood of Confusion Between VGT and CHG Electronic Gaming Machines” report prepared by Dr. Yoram (“Jerry”) Wind (“Wind Report”), dated August 10, 2018. The stated purpose of the Wind Report is “to conduct a study and provide expert opinions and analysis related to likelihood of confusion between electronic gaming machines (‘EGMs’) made by VGT and those made by Castle Hill Gaming (‘CHG’) among consumers who have played or intend to play such machines in Oklahoma casinos.”<sup>1</sup> The Wind Report is fatally flawed for the following reasons:

- Failure to identify and differentiate the target market for the EGMs;
- Use of the SQUIRT survey protocol instead of the more appropriate EVEREADY survey protocol;
- Absence of foundation for basing the survey on a single VGT EGM and a single CHG EGM while ignoring other trademarks and alleged trade dress elements;
- Selection and reproductive quality of images used in the survey;
- Failure to replicate the real-world environment in which the games are encountered;
- Improper use of leading and compound questions in the survey questionnaire;
- Unfounded extrapolation of survey results to other trademarks and alleged trade dress; and

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<sup>1</sup> Wind Report, p. 1.

- Unnecessarily complex details in the Wind Report's analysis while the report fails to consider key information.

For these reasons, as developed in more detail in this report, it is my opinion that the conclusions in the Wind Report are not reliable because they are not based on sound methodology, and the report failed to focus on the relevant target markets. Additionally, to the extent that the gratuitous "Other Relevant Evidence" comments in the Wind Report are not encompassed and supported in the survey itself, they are unreliable, irrelevant, biased, and not useful and should be stricken in their entirety.

## II. Personal Background (See Exhibit A)

2. Present Activities. I am currently a faculty member at Roosevelt University. I am also Principal of James T. Berger/Market Strategies, a strategic marketing communications and consulting firm. I currently teach courses in Market Research, Advertising, Consumer Behavior, Personal Selling and Sales Management, Global Marketing, Marketing Management, and Marketing in Theory and Practice at Roosevelt University's Walter E. Heller College of Business Administration. I have previously taught graduate and undergraduate marketing-related courses at DePaul University and Loyola University, and Northwestern University's Kellogg Graduate School of Management. In addition, I have taught undergraduate courses at Northwestern University's School of Continuing Studies, The University of Illinois at Chicago, and The Lake Forest Graduate School of Management. In November 2011, Oxford University Press published a book that I co-authored with R. Mark Halligan of the law firm of Nixon Peabody entitled *Trademark Surveys: A Litigator's Guide*. A second edition was published in spring, 2015. A second book, *Trademark Surveys in the Age of Daubert* was published by Lexis-Nexis/Matthew Bender in summer, 2016. In addition, I have authored many articles dealing with marketing and other business-

related issues. A copy of my curriculum vitae, summary of my teaching experience, publications list, billing rate and testimony experience, are attached to this report as **Exhibit A**.

3. Education. I received a Master's Degree in Business Administration in 1978 from the University of Chicago Graduate School of Business (now known as The University of Chicago Booth School of Business), with concentrations in marketing and finance. I also received a Master of Science Degree in Journalism from Northwestern University's Medill School of Journalism in 1965 with concentrations in the news and editorial sequence, and a Bachelor of Arts Degree with a major in journalism from the University of Michigan in 1964.
4. Prior Experience. I have previously worked as an account supervisor for two Downtown Chicago advertising agencies, as vice president and director of public relations for another Chicago advertising agency, and as account supervisor for two major Chicago public relations agencies. I have had my own marketing communications consulting practice for more than 35 years and have been involved in marketing consulting and survey work for law firms for more than 20 years.
5. Market Research/Trademark Experience. I have extensive market research experience, including quantitative and qualitative survey research, and have performed in-person, telephone, and Internet-based interviewing in various industries with respect to brands and trademarks. I have also designed and coordinated market research programs, including drafting questionnaires, performing and supervising personal interviews, organizing focus groups, tabulating and evaluating data, and preparing research reports. I have delivered continuing legal education programs entitled "Intellectual Property Surveys: Best Practices" twice before the Chicago Bar Association, twice before the Milwaukee Bar Association,

before the St. Louis Bar Association, before the Indiana Bar Association, and before the Texas Bar Association. In addition, I was a presenter at a session in March 2003, before the Minnesota State Bar Association, entitled “The Effective Use of Survey Experts and Evidence in Trademark Cases.” Furthermore, in addition to my two published books, I have authored 18 articles on intellectual property and trademark/secondary meaning surveys for *INTELLECTUAL PROPERTY TODAY* Magazine: (1) “10 Frequently Asked Questions About Intellectual Property Surveys,” which appeared in the August 2003 issue; (2) “Swimming in Shark-Infested Waters,” which appeared in the June 2004 issue; (3) “Creativity Key to Executing Toughest IP Survey Projects,” which appeared in the July 2005 issue; (4) “What IP Attorneys Should Know About Expectations and Costs for Survey Research,” which appeared in the April 2006 issue; (5) “10 Easy Ways to Blow Away A Survey,” which appeared in the January 2007 issue; (6) “The Power and Perils of Internet Surveys,” which appeared in the August 2007 issue; (7) “How to Do an IP Survey Without Giving Away the Store,” which appeared in the April 2008 issue; (8) “New Challenges to the IP Survey Process,” which appeared in the July 2009 issue; (9) “Introducing the Internet/Telephone ‘Hybrid’ Survey,” which appeared in the July 2010 issue; (10) “When NOT To Do An Intellectual Property Survey,” which appeared in the November 2010 issue; (11) “A New Survey Protocol for Proving/Disproving Design Patent Infringement,” which appeared in the April 2011 issue; (12) “How to Apply Theory of Probability to the Decision of Whether to Do an I.P. Survey,” which appeared in the February 2011 issue; (13) “The Descriptive/Suggestive Conundrum in Trademark Surveys,” which appeared in the November 2011 issue; (14) “The Pre-Litigation Pilot Trademark Survey,” which appeared in the March 2012 issue; (15) “Frequently Asked Questions About Trademark Surveys,” which

appeared in the December 2012 issue; (16) “Internet Surveys Come of Age,” which appeared in the July 2013 issue; (17) “10 Common Myths About Trademark Surveys,” which appeared in the September 2013 issue, and (18) “Will A Survey Help Win A Likelihood of Confusion Case?” in the September 2014 issue. I also do extensive freelance writing for magazines and other publications on a variety of business-related topics, including marketing, marketing communications and trademarks. Early in my career, I worked as Account Executive and later Account Supervisor at The Public Relations Board, Inc. Chicago. In this capacity, I developed several surveys and was responsible for compiling MUSIC U.S.A., an annual compilation of statistical data of the music industry and music participation in the United States.

6. Trademark Testifying Experience. The list of cases in which I have testified in deposition or at trial is set forth in my curriculum vitae, attached to this report as **Exhibit A**. I have testified as an expert in strategic marketing, marketing communications and intellectual property surveys with respect to brands and trademarks. Over the last 20 years, I have been retained as an expert in more than 100 lawsuits. In many of those lawsuits, the issue was some form of trademark or trade dress infringement, likelihood of confusion, and/or whether a trademark had achieved secondary meaning. In addition, I have been retained as an expert in cases involving efforts to prove or disprove whether names were generic, descriptive, or suggestive.

### **III. Retention**

7. I was retained in this matter by Saul Ewing Arnstein & Lehr, LLP, attorneys for the Defendants, for the purpose of preparing a rebuttal to Dr. Wind’s report. My consulting fee













but your opinion would be essentially guessing. There is no explanation for the selection of these players as survey participants.<sup>31</sup>

22. Dr. Wind should have selected another market, such as Michigan or Minnesota or another state that offers casino gambling as a “control.” If the sole purpose of the survey was to determine likelihood of confusion between the machines based solely on similarity of appearance, Dr. Wind should have shown the same machines to markets where both VGT and CHG lack the extremely high market share that VGT possesses in Oklahoma. By showing this array in a different locale other than Oklahoma, it would enable respondents to compare the images without the bias of having seen them before. This would provide an excellent “control.”

**B. Failure to Employ Eveready Protocol.**

23. The Wind Survey employs the SQUIRT survey method rather than the EVEREADY method, without explanation. In most likelihood of confusion surveys, the survey expert has the choice of using one or both of these protocols. The EVEREADY protocol is the superior test when it is possible to apply it. The EVEREADY protocol came out of the landmark case, *Union Carbide Corporation v. Ever-Ready Incorporated*, 531 F.2d 366 (7th Cir. 1976). The SQUIRT Protocol came out of the landmark case, *Squirtco v. The Seven-Up Company*, 628 F.2d 1086 (8th Cir. 1980). I use for my rationale the latest article by a leading peer-reviewed expert, Jerre B. Swann, writing in the International Trademark Association’s “The Trademark Reporter,” in an article entitled “Eveready and Squirt Cognitively Updated,” (Vol. 106 No. 4 July-August, 2016). Here is how Swann defines the two protocols:

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<sup>31</sup> Wind Report, p. 8.















**E. Survey questionnaire presents leading and compound questions.**

35. The survey lacks a “Filter Question” or “Filter Statement” – an explanation at the start of the survey that tells the respondent that they don’t have to know the answers to all the questions and if they don’t know an answer it’s perfectly OK to say, “DON’T KNOW.” This removes the burden of the respondent feeling he/she must answer every question. It is intended to prevent compelling the respondent to guess at answers.

36. The survey essentially had three major questions:

- (a) do you think that each of these machines is made by a different company? OR (b) do you think that any of these machines are made by the same company? OR OR (c) don’t you have an opinion?
- Which machines do you think are made by the same company? Please select the machines that you think are made by the same company.
- (a) do you think that none of these machines are made by companies associated or affiliated with each other? OR (b) do you think that any of the machines are made by companies that are associated or affiliated with each other? OR (c) don’t you have an opinion?

Without the filter statement, the first question can be viewed as acceptable because of the use of the word “any.” However, the second and third questions are leading questions because the absence of the words “if any” suggest the answer. The questions should have been worded:

- Which machines, IF ANY, do you think are made by the same company?
- Which machines, IF ANY, do you think are made by companies that are associated or affiliated with each other?

The inclusion of the words IF ANY and the option to select DON’T KNOW as an acceptable choice removes the onus of the question being a leading question. Otherwise, the respondent is essentially being told: “select the machines made by the same

company” and “select the machines that you think are associated or affiliated with each other.”

37. The third question is compound in nature because it includes the terms “associated or affiliated.” Merriam-Webster defines “affiliated:”<sup>42</sup>

“closely associated with another typically in a dependent or subordinate position.”

It defines “associated:”

“joined together often in a working relationship”

OR

“related, connected, or combined together.”<sup>43</sup>

Because “associated and “affiliated” have different connotations, separate questions are required. Survey expert, (the late) Jacob Jacoby discusses the problematic issues with these kinds of questions when he wrote:

Double-barreled questions are those that cover two or more independent concepts to which the respondent is supposed to give a single response. The problem surfaces when the respondent would give different answers for the different components but are forced by the question to give a single answer that applies to all the components....Compound questions are very similar to double-barreled questions. While they use the word “and” to connect different thoughts, they may also use the word “or,” thereby combining two questions in one....<sup>44</sup>

**F. Failure to replicate the casino environment in which the games are presented**

38. Conducting a legitimate SQUIRT survey requires presentation of the trademarks or trade dress in an authentic marketplace environment. Each of the drawings of the five machines was presented in isolation and without context -- not how they are encountered in a casino.

There was no attempt to develop images of the games in real world/real time setting, creating a higher likelihood of confusion and a lower degree of reliability. Rather than the sterile

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<sup>42</sup> Merriam-Webster Online Dictionary, available at <http://www.merriam-webster.com/dictionary/affiliated>

<sup>43</sup> Merriam-Webster Online Dictionary, available at <http://www.merriam-webster.com/dictionary/associated>

<sup>44</sup> Jacoby, Jacob, Trademark Surveys: Designing, Implementing and Evaluating Surveys, Volume 1, American Bar Association, Section of Intellectual Property Law, 2013, Chapter 8.43 Question Biases, Page 744.



Wind's survey completely ignores by using static images rather than attempting to recreate real world conditions of a consumer.

**G. The analysis is unnecessarily complex and fails to consider key information.**

41. The length and bulk of the Wind report makes it very difficult to find essential information.

With such a flawed questionnaire and the absence of a truly legitimate "control" mechanism, the verbatim answers, which take up the bulk of the report, are meaningless.

42. Because of the previously stated bias in the image reproduction and the use of two Class III machines as "controls," there is only one internal control within the survey, and that is insufficient. This survey demands an adequate control to gauge "noise." It lacks such a control, and this is a crucially missing element to this survey.

**H. Unfounded extrapolation of survey results to other trademarks and trade dress.**

43. Dr. Wind unfairly and without any scientific basis extrapolates the results of his survey, which involved comparing a single VGT and CHG EGM, respectively, to draw broad and overreaching conclusions about confusion between VGT and CHG EGMs in general (Wind Report, p. 24). There is no basis for Dr. Wind to draw any conclusions from his study about VGT or CHG EGMs other than the specific EGMs he actually included in his study.

44. Before jumping to his conclusions, Dr. Wind made no attempt to explain why the VGT and CHG games included in his survey allow him to draw conclusions about all VGT and CHG games, including the numerous VGT and CHG games not included in his survey. Dr. Wind failed to present any theory, method, evidence, or argument that the images of the games he selected were representative of all VGT or CHG games.

- Dr. Wind has presented no basis for a hypothesis that the images of the games used are representative of all VGT or CHG cabinets. To the contrary, as

explained above, VGT has many types of cabinets on the market. Similarly, CHG has more than one type of cabinet on the market.

- Dr. Wind has presented no basis for a hypothesis that the images of the games used are representative of all VGT or CHG artwork. To the contrary, both VGT and CHG offer numerous games and combinations of different artwork styles, colors, characters, games without characters, layouts, pay table styles, and other artistic design choices. Dr. Wind has presented no basis to support his conclusion that the images of the two games used in his survey are representative of all VGT or CHG trademarks and trade dress combinations.

## **VI. Discussion of Dr. Wind’s “Other Relevant Evidence”**

45. Dr. Wind has supplemented his report with certain “contentions,” not based on his survey, that have no basis in fact or survey theory. To the extent that these statements are not addressed and supported in connection with the survey, they must be wholly discounted and stricken from the report.

- Strength of trade mark and trade dress. The survey does not establish the strength of VGT’s trademarks or trade dress. The trade dress elements must achieve secondary meaning before even qualifying to be considered for likelihood of consumer confusion. Dr. Wind did not conduct a secondary meaning survey and there is nothing in his report that establishes secondary meaning of the alleged trade dress elements. It would be difficult if not impossible to establish secondary meaning because VGT employs dozens of combinations of the various elements in its EGMs, creating a lack of consistency of use that is inherently contrary to the requirements for secondary meaning.



- Actual confusion. The weight and sufficiency of anecdotal actual confusion is not a subject of a likelihood of confusion survey. The reported instances of “actual confusion” are either by anonymous players or VGT’s own employees or their family members. The four anecdotes of alleged confusion are unreliable, irrelevant and not helpful for purposes of a consumer survey.

## **VII. Conclusions and Opinion**

46. For the reasons stated in this report, it is my opinion that the Wind report is unreliable because the survey:

- failed to identify and justify the selection of the “target market;”
- used only the SQUIRT survey protocol with side-by-side comparisons;
- lacked the foundation for basing the survey on a single VGT EGM and a single CHG EGM while ignoring other key considerations;
- presented images in isolation with biased positioning, color and quality;
- formed questions that were leading and compound;
- failed to make any attempt to replicate the casino environment;
- lacked adequate controls;
- with no basis in accepted methodology, the results of a single confusion survey are extrapolated to apply to dozens of other allegedly infringed trademark and trade dress elements; and
- presented results in an unnecessarily complicated format.

47. For so many reasons, Dr. Wind’s effort falls short of the goals he set for himself. He has both oversimplified some important areas while making his final report overly complex. In my opinion, Dr. Wind has not proven that CHG has improperly entered the Oklahoma market with products that are creating a likelihood of confusion. The scope of the survey

and methodology used by Dr. Wind, in my professional opinion, has little merit and should be rejected by the Court.

A handwritten signature in blue ink that reads "James T. Berger". The signature is written in a cursive style with a large, looping initial "J".

James T. Berger  
August 31, 2018

# EXHIBIT A

CURRICULUM VITAE

**James T. Berger/Market Strategies, LLC**  
*IP Litigation Services & Surveys; Trademarks/Brands/Marketing;  
Marketing Consultant; Free-Lance Writer; University Instructor*

James T. Berger/Market Strategies, LLC  
555 Skokie Blvd. - Suite 500, Northbrook, IL 60062  
847-897-5599 Fax 847-480-7859  
E-mail: [jberger@jamesberger.net](mailto:jberger@jamesberger.net) WEB: [www.jamesberger.net](http://www.jamesberger.net)

**EDUCATION**

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MBA University of Chicago, Graduate School of Business, concentrations in marketing and finance.

MS Northwestern University, Medill School of Journalism, concentration in news/editorial sequence.

BA University of Michigan, College of Literature, Science and the Arts, major in journalism.

**PROFESSIONAL EXPERIENCE**

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MARKET STRATEGIES, Chicago. Evanston and Northbrook, IL (1983 to present) Principal of this marketing services/consulting firm, which specializes in:

- Intellectual Property Expert Witness services.
- Strategic marketing planning including creating written market plan documents.
- Implementing marketing programs.
- Integrated marketing communications services including advertising, public relations, sales promotion, direct mail.
- Helping clients develop and maintain business relationships.

As a "hands-on" consultant, I help clients develop strategies and programs as well as assist in the implementation. The firm concentrates on business-to-business marketing with specific focus on financial services, accounting and consulting services, commercial real estate, eldercare, office technology, manufacturing and distribution. Expert witness services include litigation support activities including surveys and testimony-related activities. Concurrent with the management of Market Strategies, I became involved with:

THE INVESTOR RELATIONS COMPANY, Northbrook, IL (June 1998 to July 1999)  
As Senior Vice President, I was involved in the full array of Investor Relations activities including account management; working with the financial press including magazines, newsletter and wire services; direct contacts with analysts and brokers; and writing of financial news releases, quarterly and annual reports, profiles and fact sheets.

THE FINANCIAL RELATIONS BOARD, INC., Chicago, IL (April 1997 to June 1998)  
As an Account Manager for this large, national investor relations firm, I:

- Coordinated account service, market intelligence and media activities.
- Created investment profiles and fact sheets; developed and wrote annual reports,

quarterly earnings releases and other news releases.

STERN WALTERS/EARLE LUDGIN, Inc., Chicago, IL (1980-83) Vice President -- Account Supervisor:

- Account manager for Associates Commercial Corporation account, a commercial finance company with advertising billings in excess of \$7 million.
- Account manager for Sears, Roebuck & Co. Contract Sales Group division.
- Developed marketing strategies, planning and account management.

THE WITTLEDER COMPANY, Inc., Chicago, IL (1976-80) Vice President -- Account Supervisor:

- Created and implemented marketing strategies and programs.
- Clients involved in office products and services, data systems, micrographics, commercial real estate, automotive aftermarket and financial services.

BRAND ADVERTISING, Inc., Chicago, IL (1973-76) Vice President -- Director of Public Relations:

- Responsible for firm's public relations profit center.
- Programming, planning, client and media contact, writing and editing.
- Active in new business development.
- Clients involved in automotive aftermarket, industrial equipment, agriculture.

GOLIN/HARRIS COMMUNICATIONS, Inc., Chicago, IL (1971-73) Account Supervisor for this large public relations agency:

- Worked on McDonald's restaurants, agency's major account.
- Created national model awareness program for Chicagoland market.
- Managed McDonald's involvement in public affairs, ecology, energy conservation, labor relations and the inner city.
- Involved in financial relations and marketing-support activities.

## **EARLY EXPERIENCE**

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Began career as copy, wire and make-up editor for CHICAGO DAILY NEWS. Moved into corporate public relations as editor of an employee publication for ILLINOIS BELL TELEPHONE COMPANY in Chicago and Springfield, IL. As a publicity specialist for MORTON INTERNATIONAL INC., I became involved in the consumer, industrial, institutional, automotive and agricultural markets. My first experience in agency public relations was with THE PUBLIC RELATIONS BOARD, INC., (now known as PORTER NOVELLI), first as an account executive and later as an account supervisor.

## **PROFESSIONAL MEDIA EXPERIENCE**

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- Copy Editor for *Chicago Daily News*, Chicago, IL
- Editor and General Assignment Reporter for *The Patriot Ledger*, Quincy, MA
- Correspondent for *United Press International* in Ann Arbor, MI
- Part-time general assignment reporter for *Pioneer Press* newspapers, Wilmette and Highland Park, IL
- Free-lance columnist for *Homelife* section of *Chicago Sun Times*

## BOOKS PUBLISHED

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Trademark Surveys: A Litigator's Guide by James T. Berger and R. Mark Halligan (of the FisherBroyles law firm), published by Oxford University Press, 2011. Second edition published by LexisNexis Matthew Bender in 2015,

Trademark Surveys in the Age of *Daubert* by James T. Berger, published by LexisNexis Matthew Bender in 2016.

## ARTICLES PUBLISHED

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Intellectual property litigation-related articles:

- “10 Frequently Asked Questions about Intellectual Property Litigation Surveys” published in the August 2003 issue of *Intellectual Property Today*.
- “Swimming in Shark-Infested Waters,” published in June 2004 issue of *Intellectual Property Today*.
- “Creativity Key to Executing Toughest IP Survey Projects,” published in July 2005 issue of *Intellectual Property Today*.
- “What IP Attorneys Should Know About Expectations and Costs For Survey Research,” published in April 2006 issue of *Intellectual Property Today*.
- “10 Easy Ways to Blow Away a Survey,” published in the January 2007 issue of *Intellectual Property Today*.
- “The Power and Perils of the Internet Surveys,” published in August 2007 issue of *Intellectual Property Today*.
- “How to do an IP Survey without Giving Away the Store,” published in April 2008 issue of *Intellectual Property Today*.
- “New Challenges to the IP Survey Process,” published in July 2009 issue of *Intellectual Property Today*.
- “Introducing the Internet/Telephone ‘Hybrid’ Survey,” published in the July, 2010 issue of *Intellectual Property Today*.
- “How to Apply Theory of Probability to Decision of Whether to Do an I.P. Survey,” published in the February, 2011 issue of *Intellectual Property Today*.
- “A New Survey Protocol for Proving/Disproving Design Patent Infringement” by James T. Berger and Tracy Zawaski, published in the April, 2011 issue of *Intellectual Property Today*.
- “The Descriptive/Suggestive Conundrum in Trademark Surveys,” published in the November, 2011 issue of *Intellectual Property Today*.
- “The Pre-Litigation Pilot Trademark Survey,” published in the March, 2012 issue of *Intellectual Property Today*.
- “Frequently Asked Questions About Trademark Surveys,” published in the December, 2012 issue of *Intellectual Property Today*.
- “Internet Surveys Come of Age,” published in the June, 2013 issue of *Intellectual Property Today*.
- “10 Common Myths About Trademark Surveys,” published in the September, 2013, issue of *Intellectual Property Today*.

- Will A Survey Help Win A Likelihood of Confusion Case?” published in the September, 2014, issue of *Intellectual Property Today*.

Marketing communications-related articles published in:

- *Crain's Chicago Business*, a weekly business publication.
- *Services Marketing Today*, published by the American Marketing Association.
- *Talking To The Boss*, a weekly business publication.
- University of Chicago Graduate School of Business alumni magazine.
- *Your Business*, a quarterly magazine published for GE Capital by Baumer Financial Publishing, Chicago.
- *Independent Business*, a monthly magazine published by Group IV Communications, Thousand Oaks, CA.

Business-related articles in published in:

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| - <i>Active Times</i>                         | - <i>Executive Decision</i>                |
| - <i>Business Life</i>                        | - <i>Home Business Journal</i>             |
| - <i>Office Dealer</i>                        | - <i>Business Sense</i>                    |
| - <i>Office System</i>                        | - <i>Real Estate Chicago</i>               |
| - <i>Chicago Sun-Times</i>                    | - <i>American Fitness</i>                  |
| - <i>Dow Jones Business Employment Weekly</i> | - <i>Area Development</i>                  |
| - <i>Texas Realtor</i>                        | - <i>Real Estate Chicago</i>               |
| - <i>Multifamily Executive</i>                | - <i>Grid</i>                              |
| - <i>Office and Industrial Properties</i>     | - <i>Plants, Sites &amp; Parks</i>         |
| - <i>Real Estate Profiles</i>                 | - <i>Journal of Property Management</i>    |
| - <i>Kiwanis Magazine</i>                     | - <i>Commercial Investment Real Estate</i> |
| - <i>The Rotarian</i>                         | - <i>Crain's Chicago Business</i>          |
|   | - <i>Tax Credit Advisor</i>                |

## TEACHING EXPERIENCE

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ROOSEVELT UNIVERSITY

**Walter E. Heller College of Business Administration**

Received WEHCBA Outstanding Adjunct Award, 2010.

Nominated for ADJUNCT FACULTY PERSON OF THE YEAR AWARD in 2005/06.

- Marketing Research - - An undergraduate course that covers the basis of marketing Research.
- Marketing in Theory and Practice -- A graduate level course that covers basic principles of marketing and market research.
- Selling and Sales Management -- An undergraduate course focusing on consultative selling and the management of the sale force.
- Consumer Behavior -- An undergraduate course that explored the how's and why's of consumer purchasing.
- Introduction to Advertising -- An undergraduate course focusing on advertising, sales

promotion and integrated marketing communications.

- Retail Marketing Management. An undergraduate course focusing on retail marketing theories and practices.
- International Marketing Analysis – Taught at both the graduate and undergraduate levels, this course that probes how foreign companies market in the United States and how domestic companies market abroad.

#### DE PAUL UNIVERSITY

##### **College of Commerce -- Graduate Level**

- Marketing Research -- An overview of marketing research and its role in decision-making with the organization.
- Marketing Strategy -- A case-oriented course focusing on decision-making.
- Industrial Marketing -- A course utilizing cases and text that concentrates on industrial and business-to-business marketing.

##### **College of Commerce -- Undergraduate Level**

- Principles of Marketing -- A basic, survey course that introduces all the College of Commerce students to marketing.
- Marketing Management -- A second-tier course that uses cases to illustrate basic marketing principles.
- Introduction to Advertising -- A course for marketing majors that introduces students to basic advertising.
- Industrial Marketing -- A course for marketing majors focusing on industrial and business-to-business marketing.
- Personal Selling -- A course for marketing majors that concentrates on consultative selling.

#### LOYOLA UNIVERSITY

##### **Graduate School of Business**

- International Marketing — This course focuses on how foreign companies market in the United States and how domestic companies market abroad.

#### NORTHWESTERN UNIVERSITY

##### **Kellogg Graduate School of Management**

- Business Marketing -- A graduate level course focusing on industrial and business-to-business marketing principles and cases.

##### **School of Continuing Studies**

- Principles of Marketing -- An introductory survey course that covers basic principles including market research.
- Strategic Marketing: Cases in Decision-Making -- A more advanced, case-method course.
- Business-to-Business Marketing -- A course that explores the differences between consumer marketing and business marketing.
- Introduction to Public Relations -- An introductory course that focuses on the various facets of public relations and publicity.
- Integrated Marketing Communications -- A course that I created that focuses on the synergies of coordinating all the promotional blend elements.



#### UNIVERSITY OF ILLINOIS AT CHICAGO

##### **College of Business Administration**

- Advertising and Sales Promotion -- An undergraduate course that introduces students to the basic principles of advertising.
- New Product Management -- An undergraduate course focusing on the new product development and marketing process.

#### LAKE FOREST GRADUATE SCHOOL OF MANAGEMENT

- Marketing Management -- An executive graduate-level course that uses cases and a major team project to introduce students to the principles of marketing and marketing management.

#### CONTINUING LEGAL EDUCATION SEMINAR

- Presented “Intellectual Property Litigation Surveys ... Best Practices” before the Chicago, Milwaukee, St. Louis, Texas and Indiana Bar Associations. The program has been approved for continuing legal education credits.

#### MINNESOTA STATE BAR ASSOCIATION

##### Continuing Legal Education

- Faculty member for “The Effective Use of Survey Experts and Evidence in Trademark Cases.” Minneapolis State Bar Association, Minneapolis, MN, March 7, 2002.

#### MEMBER – INTERNATIONAL TRADEMARK ASSOCIATION

#### **LITIGATION EXPERIENCE**

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*I have testified in court in the following cases: (side who retained me in **BOLD**)*

**Euromarket Designs, Inc., dba Crate & Barrel Limited** v. Miriam Peters and Point Blank Multimedia, testified in U.S. District Court, Chicago, August 3, 2000.

**Heartland Corporation** v. Don Siphers et al., testified at U.S. District Court, Topeka, KS, on June 25, 2002.

St. Luke’s Eye Center v. **James Sanderson et al**, testified at trial at U.S. District Court in Tampa, FL, on June 7, 2007

Scafiddi Motors v. **General Motors Corporation**, testified before State of Wisconsin Division of Hearings and Appeals, Madison, WI, on April 4, 2008.

University of Kansas et al v. **Larry Sinks et al**, testified at trial at U.S. District Court in Topeka, KS, on July 8, 2008.

Just Enterprises, Inc. v. **(888) Justice, Inc.**, testified in U.S. District Court in Chicago, IL on June 17, 2008.

Vande Hey Brantmeier, Chevrolet, Buick, Pontiac, Inc. v. **General Motors Corporation**, testified before State of Wisconsin Division of Hearings and Appeals, Jan. 23, 2009.

Mini Melts, Inc. v. **Reckitt Benckiser, Inc.** (jury trial) testified in U.S. District Court in Sherman, TX, on June 24, 2009.

Mini Melts, Inc. v. **Reckitt Benckiser, Inc.** (bench trial) testified in U.S. District Court in Sherman, TX, on June 25, 2009.

**Fair Isaac Corporation et al** v. Experian, et al, testified in U.S. District Court in Minneapolis, MN, on November 6, 2009.

**John A. Dore et al** v. Sweports, Ltd., et al, (A brand valuation case),. testified in Cook County Circuit Court on October 24, 2011.

Audemars Piguet Holdings, S.A. et al v, **Swiss Watch International, Inc.** et al. testified in U.S. District Court in New York, NY, on June 26, 2013.

**Dwyer Instruments, Inc.** v. Sensocor, Inc., et al testified via video hook-up to trial in U.S. District Court in Ft. Wayne, IN, on June 16, 2014.

**Mike Vaughn Custom Sports** v. Chrystem “Chris” Piku et al, testified in U.S. District Court in Detroit, MI, on September 4, 2014.

**Richard Golden and Beak and Bumper LLC** v. Jang H. Lin d/b/a/ Dental USA, Inc. testified by phone in an arbitration in New Jersey on Nov. 4, 2014.

National Financial Partners, Corp. v. **Paycom Software, Inc.** testified at a Preliminary Injunction hearing in Federal Court in Chicago on May 15, 2015.

**Black & Decker Corporation et al** v. Positec USA et al, U.S. District Court in Chicago, September 29-30, 2015.

Lifetime Products, Inc., Claimant v. **Maxchief Investments, Ltd. et al.**, Respondents American Arbitration Association, at AAA offices, San Francisco, May 22-23, 2017.

**Illinois Tool Works, Inc.** v. Rust-Oleum Corporation, a Hearing in Federal Court in Houston, TX, May 3, 2018.

**I have been deposed in the following cases: (side who retained me in BOLD)**

Allan J. DeMars, as Trustee for Weisser Eyecare, Inc., v. **NBD Highland Park**, October 12, 1996.

**Black & Decker (U.S.) Inc., et al** v. Pro-Tech Power Inc., et al, February 5, 1998 And March 5, 1998.

**Atlas Electric Devices Co.** v. Q-Panel Lab Products Corporation, April 26, 2001.

**Motor Werks Partners, L.P.** v. BMW of North America, June 11, 2001.

Sparks & Crain v. **AT&T and Lucent Technologies**, February 18, 2002.

**Native American Arts** v. Earth Dweller, Ltd., and The Waldron Corporation, April 5, 2002.

**Master Tech Products, Inc.,** v. Prism Enterprises, Inc., September 11, 2002. (A trade secrets case.)

**Mansfield Plumbing Products L.L.C.** v. Mariner Partners, Inc., et al., March 4, 2003.

Horizon Health Services, Inc. v. **Allied National, Inc. et al**, October 25, 2004.

S&M Nutec, L L.C. v. **T.F.H. Publications, Inc.,** January 16, 2005.

Century 21 Real Estate v. **Century Surety Co.,** March 1, 2005.

Midwest Canvas Corp. v. **Nationwide Tarps, Inc.,** March 17, 2005.

Seed Lighting Design Co. LTD v. **Home Depot, et al.** July 14, 2005.

**Dioptics Medical Products, Inc.** v. PR Trading Company D/B/A/ Polar Ray Sunglasses Corporation, August 13, 2005.

**True & Dorin Medical Group** v. Leavitt Medical Associates, et al, September 10, 2005

Edina Realty v. **TheMLSonline.com, Inc.,** Oct.. 7, 2005.

Kevin Trudeau et al v. **George Lanoue et al**, November 21, 2005

**Dioptics** v. PR Trading Company, Feb. 17, 2006.

Wenger Corporation v. **The Stadium Chair Company, LLC,** June 22, 2006

**Cobra Capital** v. LaSalle Bank Corporation et al, July 26, 2006

Illinois Tool Works v. **Chester Brothers Machined Products, Inc. d/b/a Pneu-Fast,** Aug. 15, 2006

**Note Family, Inc.** v. Vivendi Universal Games, Inc., October 4, 2006

St. Luke's Eye Center v. **James Sanderson et al**, March 15, 2007

University of Kansas et al v. **Larry Sinks et al**, May 29, 2007.

St. Luke's Eye Center v. **James Sanderson et al**, testified at trial at U.S. District Court in

Tampa, FL, on June 7, 2007

Just Enterprises, Inc. v. **(888) Justice, Inc.** on January 11, 2008.

Schneider Saddlery Co., Inc. v. **Best Shot Products International LLC** on February 6, 2008.

Scaffiddi Motors v. **General Motors Corporation** on March 3, 2008. (Testimony related to Buyer Behavior.)

Larin Corporation v. **Alltrade, Inc.** on March 26, 2008

Mini Melts, Inc. v. **Adams Respiratory Operations, Inc. d/b/a Adams Respiratory Therapeutics** on March 13, 2008.

Dallas Cowboys Football Club and NFL Properties, LLC v. **America's Team Properties, Inc.** on April 30, 2008

Mini Melts, Inc. v. **Adams Respiratory Operations, Inc. d/b/a Adams Respiratory Therapeutics** on November 13, 2008.

**Fair Isaac Corporation et al** v. Equifax Inc. et al on December 17, 2008.

Vande Hey Brantmeier, Chevrolet, Buick, Pontiac, Inc. v. **General Motors Corporation**, on January 12, 2009.

**WMH Tool Group, Inc.** v Woodstock International, Inc., and Grizzly Industrial, Inc, on June 30, 2009.

Atlanta Allergy & Asthma Clinic, P.A. v. **Allergy & Asthma of Atlanta, LLC et al**, on July 6, 2009.

**North Shore Gastroenterology** v. North Ohio Gastroenterology on October 15, 2009.

**Metso Minerals Industries, Inc.** v. FLSmith-Exc el et al, March 26, 2010. (A trade secrets case)

**Evert Fresh Corp** v. Pactiv Corporation, September 10, 2010. (A brand valuation case).

**Mark Rice d/b/a Games to Remember** v. Brand Imports, L.L.C. et al, September 21, 2010.

Innovation Ventures, LLC v. **N2G Distributing, Inc. et al**, September 24, 2010.

**John A. Dore et al** v. Sweports, Ltd., et al, January 31, 2011. (A brand valuation case).

**Lovely Skin, Inc.** v. Ishtar Skin Care Products, LLC, October 27, 2011.

**Native American Arts, Inc.** v. Bud K Worldwide, Inc. Deposition, December 14, 2011.

**Native American Arts, Inc.** v. Peter Stone Co., U.S.A., February 3, 2012.

**Native American Arts, Inc.** v. Mangalick Enterprises, Inc. d/b/a/ IAC International, Feb 3, 2012.

**Native American Arts, Inc.** v. Atlanta Cutlery Corporation, Inc., March 1, 2012.

**Morningware, Inc. v.** Hearthware Home Products, Inc. May 2, 2012.

Treanna Winery, LLC, petitioners v. **Niner Wine Estates, registrant/responder**, June 7, 2012.

**Back in Five, LLC** v. Infinite International, Inc., June 29, 2012.

**Lively Skin, Inc.** v. Ishtar Skin Care Products, LLC, July 19, 2012.

**Aegis Sciences Corporation** v. Aegis Food Testing Laboratories, Inc. et al, June 7, 2013.

Audemars Piguet Holdings S.A. et al v. **Swiss Watch International, Inc.** et al, June 12, 2013

**ThermoLife International, Inc.** v. Gaspari Nutrition, Inc., August 7, 2013.

**David Elliott, an individual, and Chris Gillespie, an individual** v. Google, Inc., a Delaware Corporatoin et al on September 6, 2013.

**NetAirus Technology, LLC** v. Apple, Inc. on September 11, 2013

**Motorola Mobility, Inc. and Motorola Trademark Holdings, LLC** (opposers) v. Nextel Communications, Inc. (applicant), October 3, 2013.

**Robocast, Inc.** v. Apple, Inc. on Oct. 10, 2013.

**Native American Arts, Inc** v. Peter Stone Company on December 27, 2003.

**The Black & Decker Corporation et al** v. Positec USA, Inc. on February 14, 2014.

**Minitube of America Inc.** v. Reproductive Provisions LLC et al, April 18, 2014.

Dish Network, Inc. v. **Fun Dish, Inc.,** Part 1, June 23, 2014.

**Richard Golden and Beak and Bumper LLC** v. Jang H. Lin d/b/a/ Dental USA, Inc. , June 29, 2014.

**Amini Innovation Corporation** v. McFerran Home Furnishing, Inc. et al, August 8, 2014.

**Weber-Stephen Products LLC** v. Sears Holding Company et al, January 9, 2015.

Dish Network, Inc. v. **Fun Dish, Inc.,** Part 2, February 25, 2015.

**American Energy Corporation** v. American Energy Partners, L.P. et al, March 9, 2015.

**Daniel Poneman** v. Nike, Inc. et al, April 7, 2015.

National Financial Partners, Corp. v. **Paycom Software, Inc.**, April 23, 2015.

Daniel Defense, Inc. v. **Remington Arms Company, LLC et al**, July 28, 2015

**Lights Out Holdings, LLC** v. Nike, Inc., December 15, 2015

Caterpillar Inc., opposer, v. **Tigercat International Inc., applicant**, March 3, 2016

**H.J. Heinz Company** v. Boulder Brands USA, Inc. , Sept. 28, 2016

Lifeguard Licensing Corp. et al v. **Jerry Kozak et al**, Oct. 6, 2016

**Hard Candy. LLC** v. Anastasia Beverly Hills, Inc., Feb. 6, 2017

Lifetime Products, Inc., Claimant v. **Maxchief Investments, Ltd. et al.**, Respondents American Arbitration Association, Feb. 14, 2017.

Monster Energy Company v. **Integrated Supply Network, LLC**, March 23, 2018.

ServePro Industries Incorporated et al v. **Zerorex of Phoenix, LLC et al**, April 10, 2018.

**Saxon Glass Technologies, Inc.** v. Apple, Inc. July 24, 2018.

**BILLING RATE (FOR EXPERT WITNESS SERVICES)**

\$500 per hour (\$550 for time spend in testimony)

## SUPPLEMENT A

### *A Compilation of Published Articles Written by James T. Berger*

DATE	PUBLICATION	ARTICLE TITLE
<b>1998</b>		
Fall	Active Times	Wanted: Mature Workers Who Need Minimal Training, Many Positions Available
Sept-Oct	National Bus Employment Weekly	What's an M.B.A. worth?
Sept-Oct	National Bus Employment Weekly	The Degree Dilemma
November	Chgo Sun Times Business Life	Buying Into Barter
December	Crain's Chicago Business	A Crucial Goal: Increasing Schools' Visibility
Jan-Dec	Writer's Digest	
<b>1999</b>		
January	Business Life	Business is Booming in Executive Temp Industry Gary Canepa / Patty Ancona / Patraick Fortin / Richard Blevins / Nancy Mroz
38744	Real Estate Profiles	Medical Industry Goes Under the Knife
April	Business Life	Will Earning An MBA Pay off Later in Life?
38823	Wall Street Journal	Networking 101
Spring	Business Sense	Building Solid Financial Foundations
June	Business Life	Blueprint for Success
June	Your Business	Building Earnings by Barbara B. Buchholz
June	Small Business Adviser	Tips Could Help You Sell Your Home by Yourself
June	Chgo Sun Times Business Life	X-Termination
July - Aug	American Fitness	Building Solid Foundations
July	Business Life	Expanding Your Horizons
Summer	Your Business	Factoring Takes New Meaning in Today's Global Economy
August	Business Life	Push to Revive Reverse Mortgage
September	Chgo Sun Times Business Life	Opportunities Abound for Older Workers
September	Business Life	Working Into Retirement
September	Kiwanis	10 Easy Ways to Lose a Client
September	Independent Business	Wet and Wild on the West Coast by J. Fisher Park & J. Morgan Park
Fall	Recreation Management	Reversal of Fortune for Reverse Mortgages
September	Active Times	Mortgage Plan Helps Buyers with Bad Credit
September	Chgo Sun Times Homelife	Mortgage Lenders Won't Suffer Despite Market Changes
September	Chgo Sun Times Homelife	Are Stockbrokers and Endangered Species?
November	Business Life	Turning Hobbies Into Profitable Home-Based Businesses
November	Home Business	Prepayment Penalty Offers a Trade-Off for Homeowners
November	Chgo Sun Times Homelife	No Doc Loans Help Self-Employed
17-Dec	Chgo Sun Times Homelife	Entire Year
1999	Commercial Lending Report	
<b>2000</b>		
7-Jan	Chgo Sun Times Homelife	Blacks Still Face 'Predatory Lending' Schemes: study
12-Jan	Chgo Sun Times Homelife	Home Ownership Rising in Nation, While Equity is Falling
14-Jan	Chgo Sun Times Homelife	New Laws Might Boost Reverse Mortgage's Appeal
16-Jan	Chgo Sun Times Homelife	Banking On Your Home
21-Jan	Chgo Sun Times Homelife	Not All Mortgages Require Buyer to Make a Down

		Payment
22-Jan	Active Times	Do Banks Protect Your Privacy
28-Jan	Chgo Sun Times Homelife	Legal Foundation Guards Against Mortgage Scams
January	Business Life	WWII Fighting For Bandwidth
January	Recreation Management	Welcome To The Great Outdoors
January	Commercial Lending Report	All Loans Are "Good" When You Make Them
Winter	Business Sense	Grievance Alert
11-Feb	Chgo Sun Times Homelife	Your Portfolio Can Provide Mortgage Down Payment
18-Feb	Chgo Sun Times Homelife	Worried Buyer Can Try An Interest-Rate Option
25-Feb	Chgo Sun Times Homelife	Go For Brokers
Feb-29	Chgo Sun Times Business	Leap Day has It's Benefits
February	Business Life	WWII Fighting For Bandwidth
3-Mar	Chgo Sun Times Homelife	Rising Interest Rates Take Toll on Buyers Mortgages
17-Mar	Chgo Sun Times Homelife	Home Saver Helps Avert Foreclosure
24-Mar	Chgo Sun Times Homelife	Closing On A Home Often Troublesome
31-Mar	Chgo Sun Times Homelife	Web Portal Can Speed Loan Process
March	Recreation Management	If You Build It, They Will Swim
March	Business Life	Consumers Not Ready to Leave Mall Behind
May	Texas Realtor	What's Up With Mortgages?
10 - Oct	Chgo Sun Times Homelife	Fed holds key to stable mortgage rates: experts
29 - Oct	Chgo Sun Times Homelife	Landscaping is a cheap and easy fix
29 - Oct	Chgo Sun Times Homelife	Home offices, pools not worth it
3 - Nov	Chgo Sun Times Homelife	As closing nears, lender wants money for a "hold back"
17 - Nov	Chgo Sun Times Homelife	Fannie Mae helps lending victims
24 - Nov	Chgo Sun Times Homelife	'Tis the season to be wary when seeking a mortgage
1 - Dec	Chgo Sun Times Homelife	Chicago mortgage bank reaches out to immigrants, minorities
3 - Dec	Chgo Sun Times Homelife	Land contract may fail without canceled checks
<b>2001</b>		
January 12	Chgo Sun Times Homelife	Showcase of Homes Offers Vision of Future
19-Jan	Chgo Sun Times Homelife	Failure To Compute
January	Multifamily Executive	Generation Y Hits the Market
January	Multifamily Executive	Peace of Mind - Renter's Insurance Can Protect Property
16-Feb	Chgo Sun Times Homelife	Tailor Made - New Type of Mortgage is Uniquely
February	Bizlife	Designed for Individual Borrowers
March	Real Estate Chicago	Grass America Inc: What the Well-Dressed Kitchen is
March	Utah Business	Wearing
6-Apr	Chgo Sun Times Homelife	Kenosha Casino Nixed
Spring	Bizhealth	Whittling Down the Tax Man
April	Rotarian	Homeowner insurance not enough to cover a home office
May	Real Estate Chicago	or business; Protecting the Boss
June	Real Estate Chicago	Family Service of the Piedmont
September	Area Development	Boot Up Soldier!
October	Real Estate Chicago	A Soft Office Market
Nov-Dec	Commercial Real Estate	Lake County Land Squeeze
Nov-Dec	Real Estate Chicago	Industrial Market
		Update at the Glen
		Virtual Money
		Abbott Leases Big
<b>2002</b>		
February	Area Development	Property Protection Comes of Age



March	Texas Realtor	On Loan
March	Area Development Magazine	On the Fast Track to Freer Trade?
March	Real Estate Chicago	City Park in Home Stretch
April	Real Estate Chicago	Recovery Ahead?
		Trusts a Must for the Moneyed;
April	Crain's Chicago Business	Variety of Plans Offer Tax Beaks, Other Incentives
May	Real Estate Chicago	The Mallinckrodt Property
June	Area Development	Welcoming Recovery
July	Area Development	Assessing the Post-War Economy
July	PS&P	Site Selection Shake Up
	Journal of Property	
July-Aug	Management	Flower Power (Interior Landscape)
September	PS&P	Avoiding Economic Espionage
October	Bizlife	The Man Behind the High Point Transportation
<b>2003</b>		
August	The Wiglaf Journal	Getting Lost on the Worldwide Web
August	Intellectual Property Today	10 Frequently Asked Questions About Intellectual Property Litigation Surveys
<b>2004</b>		
May	Plants Sites & Parks	Milwaukee on the Grow
June	Intellectual Property Today	Swimming In Shark-Infested Waters
July	Plants Sites & Parks	Electronics Industry on the Fast Track
September	Wiring Harness News	Using Customer Service as a Competitive Edge
		U.S. Economic Recovery Spurs Industrial Park Growth in Mexico
November	Plants Sites & Parks	Getting the Most Value Out of Your Survey Expert
November	Intellectual Property Today	
<b>2005</b>		
January/February	Executive Decision	On The Job with "The Apprentice"
		Why Chicago is Bill Rancic's Kind of Town
March	The Wiglaf Journal	The Decline and Fall of the AT&T empire — Marketing Myopia Revisited
April	The Wiglaf Journal	10 Easy Ways to Lose a Customer
May	Executive Decision	Secrets of the Best Rainmakers
June	The Wiglaf Journal	Converting Productivity to Profitability
July	Intellectual Property Today	Creativity Key to Executing Toughest IP Survey Projects
August	The Wiglaf Journal	What's In a Name?
<b>2006</b>		
January	The Wiglaf Journal	Thoughts on Relationship Marketing
		A Matter of Survival:
January/February	Executive Decision	CEOs need to commit to Lifelong Learning
February	The Wiglaf Journal	Peeling the Customer Loyalty Onion
March	The Wiglaf Journal	Creating "Monopolies" from Customer Value Propositions
March/April	Executive Decision	The Rich Get Richer
		What IP Attorneys Should Know Expect & Costs for Survey Research
April	Intellectual Property Today	All The Right Moves
		Strategies and Tactics for Corporate Relocations
May/June	Executive Decision	A New Life for ABLs. Strong Economy and Lots of Available Cash Fuel Asset-Based Lending Boom
July/ August	Executive Decision	Integrated Marketing Environment Putting New Pressure on Sales Management,
September	The Wiglaf Journal	

September/October December	Executive Decision Tax Credit Advisor	All Banks are not created Equal Sponsors "Brand" Housing Credit Properties
<b>2007</b>		
January	Intellectual Property Today WebsiteRevamp.org	10 Easy Ways to Blow Away A Survey Lost on The Web Multifamily Realtors See Benefits of Branding in Driving Internet Sales Bridgeport Historic Rehabilitation Project Helping to Transform Downtown Cover Story: AMLI'S Secret Formula – All the Ingredients for Sophistication Spotlights: Executive – No. 1 Cheerleader – Mutz Has Spirit and Vision Management – Taking Full Advantage – Technology Provides a Competitive Edge Marketing – Brand Loyalty – AMLI Markets Through its Brand Training – Pursuit of Excellence – Training Helps AMLI Reach Goals On Site – Know the Facts – AMLI Serves through Information
January	WebsiteRevamp.org	
January	Tax Credit Advisor	
January/February	MultiFamily Pro	
	MultiFamily Pro	
	MultiFamily Pro	
	MultiFamily Pro	
	MultiFamily Pro	
	MultiFamily Pro	
February	The Wiglaf Journal	The "iPhone" Brouhaha Different Actions, Tactics can Foster Quicker, Effective Lease-Up of New Tax-Credit Properties Don't Segment Markets – "Hire" the Product The Challenge Of Building A Global Workplace Community Cover Story: Place Properties Is The Place – Welcome to the World of Student-Friendly College Housing Spotlights: Executive – Nightmare Interupus – Phillips Filled a Student Housing Need Management – An Engaged Audience – Ratchford Attracts Generation Y with Technology Marketing – Hitting the Target – Nix and Dunton Market to Distinct Groups Training – Gaining an Edge – Wolff Directs the Management Team On-Site – Two-Sided Approach – Place Focuses Both On and Off Campus Reducing Tenant "Churn" Essential for Successful Tax Credit Properties Industry Participants Suggest Ways to Trim Construction Operating Costs A New Way to Segment B-T-B Markets – Put Your Product to Work Adding Green To The Bottom Line The Difficulty of Developing Profitable and Unique Sales Promotions Market Studies Remain Key for Determining Feasibility of Proposed LIHTC Projects The Perils of Using the Internet for Surveys Is the Private Life for You?
March	Tax Credit Advisor	
March	The Wiglaf Journal	
March/April	Executive Decision	
March/April	MultiFamily Pro	
	MultiFamily Pro	
	MultiFamily Pro	
	MultiFamily Pro	
	MultiFamily Pro	
	MultiFamily Pro	
April	Tax Credit Advisor	
May	Tax Credit Advisor	
May	The Wiglaf Journal	
May/June	Executive Decision	
June	The Wiglaf Journal	
June	Tax Credit Advisor	
July	The Wiglaf Journal	
July/August	Executive Decision	

August	The Wiglaf Journal	More Private Companies Are Opting To Go Private How to Make Your E-Mail Marketing More Effective
August	Tax Credit Advisor	Affordable Rental Housing Development Is Becoming Increasingly "Green"
August	Intellectual Property Today	The Power and Perils of Internet Surveys
August	Tax Credit Advisor	Oregon Family Development Incorporates Variety of 'Green' Features
September	The Wiglaf Journal	HR Help for the Entrepreneur
October	The Wiglaf Journal	Ease Up on Sales Button for New Ventures
		Robust Population, Job Growth Favor Development
		Phoenix Area, But Condo Overhand, New Production Are Issues
October	Tax Credit Advisor	Baltimore Area Marked by High Demand for Additional Affordable Housing
November	Tax Credit Advisor	Pittsburgh Market Has Strong Demand for Affordable Housing Despite Sluggish Economy
December	Tax Credit Advisor	To Brand ...or NOT to Brand New Products
December	The Wiglaf Journal	
<b>2008</b>		
January	Tax Credit Advisor	Milwaukee's Economy on the Grow; Strong Demand for Affordable Housing
January	The Wiglaf Journal	Marketing Lessons from Hollywood
January	The Wiglaf Journal	"Top 100 Brands" Quiz
February	Tax Credit Advisor	Vibrant Seattle Economy Spurs Demand for Affordable Housing
		In Whom do we Trust? The Movement for Greater Accountability and Disclosure
March/April	Executive Decision	Looking Positively at the "R" Word
March	The Wiglaf Journal	Adding Bite to your E-Mails
March	The Wiglaf Journal	Cleveland's Perfect Storm of Rising Foreclosures
April	Tax Credit Advisor	How to do an IP Survey without Giving Away the Store
April	Intellectual Property Today	B-2-B Trademarks and Brands – A Slippery Slope
April	The Wiglaf Journal	Want to Know Who Sarah Marshall Is?
April	The Wiglaf Journal	Atlanta Economy Slowing But Still Growing; Tax Credit Housing Challenged
May	Tax Credit Advisor	A New Business Primer for Growing Organizations
June	The Wiglaf Journal	Milwaukee's Economy on the Grow; Strong Demand for Affordable Housing
		New Desire Housing Project Rises from Devastation of Katrina
July	Tax Credit Advisor	What's a Brand Worth Anyway?
August	Tax Credit Advisor	Chicago Has Vibrant Affordable Housing Market
September	The Wiglaf Journal	Starbucks Discovers Marketing Myopia
September	Tax Credit Advisor	Portland Economy, Multifamily Housing Easing into "Soft Landing"
November	The Wiglaf Journal	Musing from a Marketer on the Economic Crisis
December	Tax Credit Advisor	
December	The Wiglaf Journal	
<b>2009</b>		
January	The Wiglaf Journal	Empathy — The Missing Element in Relationship Management
February	Tax Credit Advisor	MarketSketch: Houston Area Still Attractive Market for LIHTC Development
March	The Wiglaf Journal	The "Dark Side" of Entrepreneurship
April	The Wiglaf Journal	Recession Takes Toll on Brand Values

April	The Wiglaf Journal	Opportunities Starting to Sprout as Entrepreneurs Pick Up Pieces from Shattered Economy
May	The Wiglaf Journal	Two Harvard Experts Provide Perspective on Building Entrepreneurial Businesses in Troubled Times
July	Tax Credit Advisor	Everything You Wanted to Know About Multi-Family Energy Audits
July	The Wiglaf Journal	New Paradigms Abound
June/July	Area Development	Military Bases as Economic Development Magnets
August	The Wiglaf Journal	Trying to Put the Toothpaste Back into the Tube
September	The Wiglaf Journal	Global Marketers Unclear About Obama's Direction
October	The Wiglaf Journal	Marketers Find Gold on Old Brand Junk Heap
December	The Wiglaf Journal	Looking for a New Advertising Agency? It's a Buyer's Be Careful
Market <b>2010</b>		
January	The Wiglaf Journal	Nurturing Relationships More Important Than Ever
February	The Wiglaf Journal	IPad Has All the Ingredients of a Classic Marketing Blunder
March	The Wiglaf Journal	Professional Musings from the World of Marketing
June	The Wiglaf Journal	Toyota – Crisis Management at its Worst
June-July	Area Development	The Bible of Marketing Mistakes and Successes
July	Intellectual Property Today	Obama Promotes Export Policy to Rally Economy
Survey		Introducing the Internet/Telephone "Hybrid"
July	The Wiglaf Journal	Lessons from a Legend
August	The Wiglaf Journal	The Undeclared, Undisputed King of Smartphones
September	The Wiglaf Journal	The Revolution in Knowledge Delivery Systems
October	The Wiglaf Journal	The Most Important Sales Call You Will Ever Make
November	The Wiglaf Journal	The Rewards of Trying To Be Different
December	The Wiglaf Journal	Story of the 2000-2010 Decade Told by Brand Values
<b>2011</b>		
January	The Wiglaf Journal	Post-Recession Era Poses Different Kinds of Challenges for Marketers
February	Intellectual Property Today	How to Apply Theory of Probability to Decision of Whether to Do an I.P. Survey
February	The Wiglaf Journal	Borders and Blockbuster: Throwing Money Down a Rat
Hole		
March	The Wiglaf Journal	H-P and Walmart – The Peril of Expectations
April	The Wiglaf Journal	Entrepreneurial Musings
May	The Wiglaf Journal	Are You Ready for Milkshake Marketing
June	The Wiglaf Journal	What Have You Done for me Lately
July	Area Development	Free Trade Agreements Stymied by Political Roadblocks
July	The Wiglaf Journal	The Groupon Phenomenon – Is it Sustainable?
August	The Wiglaf Journal	Eastman Kodak – Another Corporate Icon Fights to Survive\
September	The Wiglaf Journal	The Hidden Marketing Asset
October	The Wiglaf Journal	Killing the Golden Goose (Netflix)
November	Area Development	New Trade Agreements Slowly Becoming a Reality
November	Intellectual Property Today	The Descriptive/Suggestive Conundrum in Trademark Surveys
November	The Wiglaf Journal	Killing the Golden Goose Part 2 (Netflix)
December	The Wiglaf Journal	The Merits of Underdog Positioning
<b>2012</b>		
January	The Wiglaf Journal	Twitter — Show Me the Money
February	The Wiglaf Journal	Corporate Icons Falling Like House of Cards
February	The Wiglaf Journal	The Resurrection of the Golden Goose
March	The Wiglaf Journal	Revenues Gained by Service Fees Undermines Relationship Marketing Goals

March	Intellectual Property Today	The Pre-Litigation Pilot Trademark Survey
April	The Wiglaf Journal	LG's Brilliant Marketing Strategy
May	The Wiglaf Journal	Lessons from Fortune's "The 12 Greatest Entrepreneurs of Our Time"
June	The Wiglaf Journal	Welcome to 'Seinfeld' Marketing
July	The Wiglaf Journal	'tis the Season for "Ambush Marketing"
Summer, 2012	Area Development	Three Mistakes CEOs Must Avoid When Relocating A Business
August	The Wiglaf Journal	Doing Good May Yield Bad Results
August	Area Development	Business Community Cheers Export-Import Bank
September	The Wiglaf Journal	10 Strategic Insights from Michael Porter
October	The Wiglaf Journal	Don't Look for Nissan's New 'World Car' To Be Seen on U.S. Roads
November	The Wiglaf Journal	J.C. Penney's Makeover An Attempt To Repeat History
December	The Wiglaf Journal	Hewlett-Packard's Downfall, AT&T Detangles its Network and other Year-End Blockbusters
December	Intellectual Property Today	Frequently Asked Questions About Trademark Surveys
<b>2013</b>		
January	The Wiglaf Journal	The Collapse of the Big Box
February	The Wiglaf Journal	The Sales Rep. Motivational Disconnect;
		An Intriguing Possibility: Legalize All Drugs
March	The Wiglaf Journal	Increased Public Scrutiny for Energy Drinks
April	The Wiglaf Journal	Why J.C. Penney's New Strategy Won't Work
		J.C. Penney's Demise Recalls Other Major Retail Failures
May	The Wiglaf Journal	"Shark Tank" Offers Valuable Insight into Marketing Entrepreneurship
June	Intellectual Property Today	Internet Surveys Come of Age
July	The Wiglaf Journal	The Challenge of Delivering Accurate Sales Forecasts
August	The Wiglaf Journal	Strategic Marketing for Entrepreneurs
Summer 2013	Area Development	Momentum Builds for U.S. – India Trade Agreement;
		Economic Stimulus for Both Sides of the Atlantic
September	The Wiglaf Journal	The Taste of Crow: Facebook's Incredible Profitability Surge
September	Intellectual Property Today	10 Common Myths About Trademark Surveys
October	The Wiglaf Journal	IPO Announcement Sets Wall Street A-Twitter
November	The Wiglaf Journal	Consumer Market Segmentation 101
December	The Wiglaf Journal	McDonald's Story Shows Why Branding is Crucially Important in Product Development
<b>2014</b>		
January	The Wiglaf Journal	The One That Got Away: Nokia and Blackberry Lose a Market
February	The Wiglaf Journal	Samsung Has Got It Right
March	The Wiglaf Journal	America's Love/Hate Relationship with Smoking
Spring Edition	Area Development	Major New Developments for Keystone Pipeline
April	The Wiglaf Journal	College Scholarship Athletes – Students or
Employees?		
May	The Wiglaf Journal	The Best and the Brightest – J.C. Penney-Style
September	Intellectual Property Today	Will A Survey Help Win A Likelihood of Confusion
Case?		
September	The Wiglaf Journal	New Insight Into Strategic Sales Force Hiring; Be
Careful		
		Of Hiring "Stars"
October	The Wiglaf Journal	Stanford Business Offers New Perspectives on

November	The Wiglaf Journal	Entrepreneurship
December	The Wiglaf Journal	Will the Marketplace Adopt Apple Pay?
Marijuana		Colorado Provides Laboratory for Marketing
2015		
January	The Wiglaf Journal	Stanford Marketing Researcher Explores the
"Decoy"		Effect"
March	The Wiglaf Journal	'Decoupling' Adds Value to Consumer While Cutting Costs
April	The Wiglaf Journal	Traditional Shopping Mall Under Siege
May	Intellectual Property Today of	Risks and Rewards for Using IP Experts in the Age
May	The Wiglaf Journal	<i>Daubert</i>
July	The Wiglaf Journal	Hotels Carry Market Segmentation to the Ultimate
August	The Wiglaf Journal	Keeping Customers Isn't Easy
Ultimate	The Wiglaf Journal	Hotels Carry Market Segmentation to the
September	The Wiglaf Journal	Harvard Prof. Sees Ben Franklin's "Way to Wealth:
as		Source for America's Brand of Capitalism
October	The Wiglaf Journal	Brand Valuations Go Topsy-Turvy over Last 10 Years
2016		
February	The Wiglaf Journal	Special Marketing Provides The Force Behind New "Star Wars" Film
March	The Wiglaf Journal	Are You an 'Imposter?' If So, the Workplace Needs
You		
April	The Wiglaf Journal	McDonald's Feasts on All-Day Breakfast, But Causes Indigestion for Some Franchisees
May	The Wiglaf Journal	Free Trade, Protectionism and Marketing
June	The Wiglaf Journal	Why Relationship Marketing Has Never Worked for
the		
July	The Wiglaf Journal	New Car Purchase
September	The Wiglaf Journal	Will Bid for Presidency Destroy the Trump Brand
		Immigrants Fueling American Entrepreneurial Successes
October	The Wiglaf Journal	The Academic Research Disconnect
November	The Wiglaf Journal	Trump Will Be Forced to Reposition His Brand Post-Election
December	The Wiglaf Journal	A Puzzlement – Why So Many Women Voted for
Trump		
2017		
January	The Wiglaf Journal	False Marketer of the Year
February	The Wiglaf Journal	Another Wiglaf Journal Valuation QUIZ
May	The Wiglaf Journal	Marketing High-Quality Commercial-Free TV and
How		to Make Money It

June	The Wiglaf Journal	Who Will Survive the Retail Revolution
July	The Wiglaf Journal	Rules of Retailing Are Changing
August	The Wiglaf Journal	The Apple iPhone: Planned Obsolescence, Disruptive Innovation or Something Else
September	The Wiglaf Journal	Wake Up and Smell the Fumes, Mr. Trump"
October	The Wiglaf Journal	Renewable Energy Is the New Growth Industry
November	The Wiglaf Journal	Is Retailing Becoming an Oligopoly?
December	The Wiglaf Journal	"Disruptive Innovation" Key to America's Future
		Future of Internet at Stake if FCC Abandons Net Neutrality

2018

January	The Wiglaf Journal	Harvard Uncovers a 15 <sup>th</sup> Century Business Success Manual
February	The Wiglaf Journal	Marketing Industry Reports – Clients and Agencies May Not Be On the Same Page
March	The Wiglaf Journal	Tariffs Defy Traditional Marketing and Pricing Theories
April	The Wiglaf Journal	Brits Give Insight Into Toys 'R Us Failure
May	The Wiglaf Journal	New Data Supports Vale of Immigrants as Entrepreneurs
June	The Wiglaf Journal	Title Barnes & Nobel Looking Like Latest Victim of Retail Maelstrom
July	The Wiglaf Journal	Decision to Grow Instead of Harvest May Be Key to Microsoft's Survival

# **EXHIBIT B**



# EXHIBIT B<sup>1</sup>

1. Likelihood of Confusion Between VGT and CHG Electronic Gaming Machines, Dr. Yoram (Jerry) Wind
2. Opening Expert Report of Stacy Friedman, August 10, 2018
3. First Amended Complaint (Dkt. 103)
4. Answer to First Amended Complaint (Dkt. 112)
5. CHG's Third Supplemental Objections and Responses to Plaintiff's First Set of Interrogatories
6. CHG's Fourth Supplemental Objections and Responses to Plaintiff's First Set of Interrogatories
7. CHG's First Supplemental Responses to Plaintiff's Fourth Set of Interrogatories
8. Plaintiff's Sixth Supplemental Objections and Responses to CHG's First Set of Interrogatories
9. Plaintiff's Second Supplemental Objections and Responses to CHG's Second Set of Interrogatories
10. Plaintiff's First Supplemental Objections and Responses to CHG's Third Set of Interrogatories
11. Plaintiff's Second Supplemental Objections and Responses to CHG's Third Set of Interrogatories
12. Deposition Transcript of Arthur Watson (or excerpts thereof)
13. Deposition Transcript 30(b)(6) of Dan Fulton (or excerpts thereof)
14. Deposition Transcript of Will Harvie (or excerpts thereof)
15. Deposition Transcript of James Starr (or excerpts thereof)
16. Deposition Transcript of Jason Sprinkle (Part 1) (or excerpts thereof)
17. Deposition Transcript of Jay Seigny (or excerpts thereof)
18. Deposition Transcript of Jon Yarbrough (or excerpts thereof)
19. Deposition Transcript of Rich Sisson (or excerpts thereof)
20. Deposition Transcript of Brandon Booker (or excerpts thereof)

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<sup>1</sup> This document sets forth the materials I reviewed in connection with the preparation of my report. Only the first bates numbered page of a multipage document is listed to identify the document reviewed.

21. Deposition Transcript of Alan Roireau (or excerpts thereof)
22. Deposition Transcript of Ryan North (or excerpts thereof)
23. Deposition Transcript of Butch McGill (or excerpts thereof)
24. Deposition Transcript of Craig Eubanks (or excerpts thereof)
25. Deposition Transcript 30(b)(6) of Don Kovach (or excerpts thereof)
26. Starr Exhibit 83
27. Starr Exhibit 84
28. Sevigny Exhibit 173
29. Sevigny Exhibit 174
30. Sevigny Exhibit 175 [VGT0006989]
31. Sevigny Exhibit 176 [VGT0007001]
32. Sevigny Exhibit 177 [VGT0007003]
33. Sevigny Exhibit 178 [VGT0007009]
34. Sevigny Exhibit 179 [VGT0007137]
35. Sevigny Exhibit 180
36. Sevigny Exhibit 181
37. Sevigny Exhibit 182
38. Sevigny Exhibit 183
39. Sevigny Exhibit 187 [VGT0007580]
40. Sevigny Exhibit 188 [VGT0007582]
41. VGT0007013
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- 46. VGT0041582
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- 55. CHG0015304
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- 312. 6 McCarthy on Trademarks and Unfair Competition § 32: 173:50 (5th ed.).
- 313. Jacoby, Jacob, Trademark Surveys: Designing, Implementing and Evaluating Surveys, Volume 1, American Bar Association, Section of Intellectual Property Law, 2013, Chapter 8.43, Question Biases.
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- 323. <https://www.facebook.com/castlehillgaming/videos/vb.552775911511888/737348076388003/?type=2&theater>

# EXHIBIT C







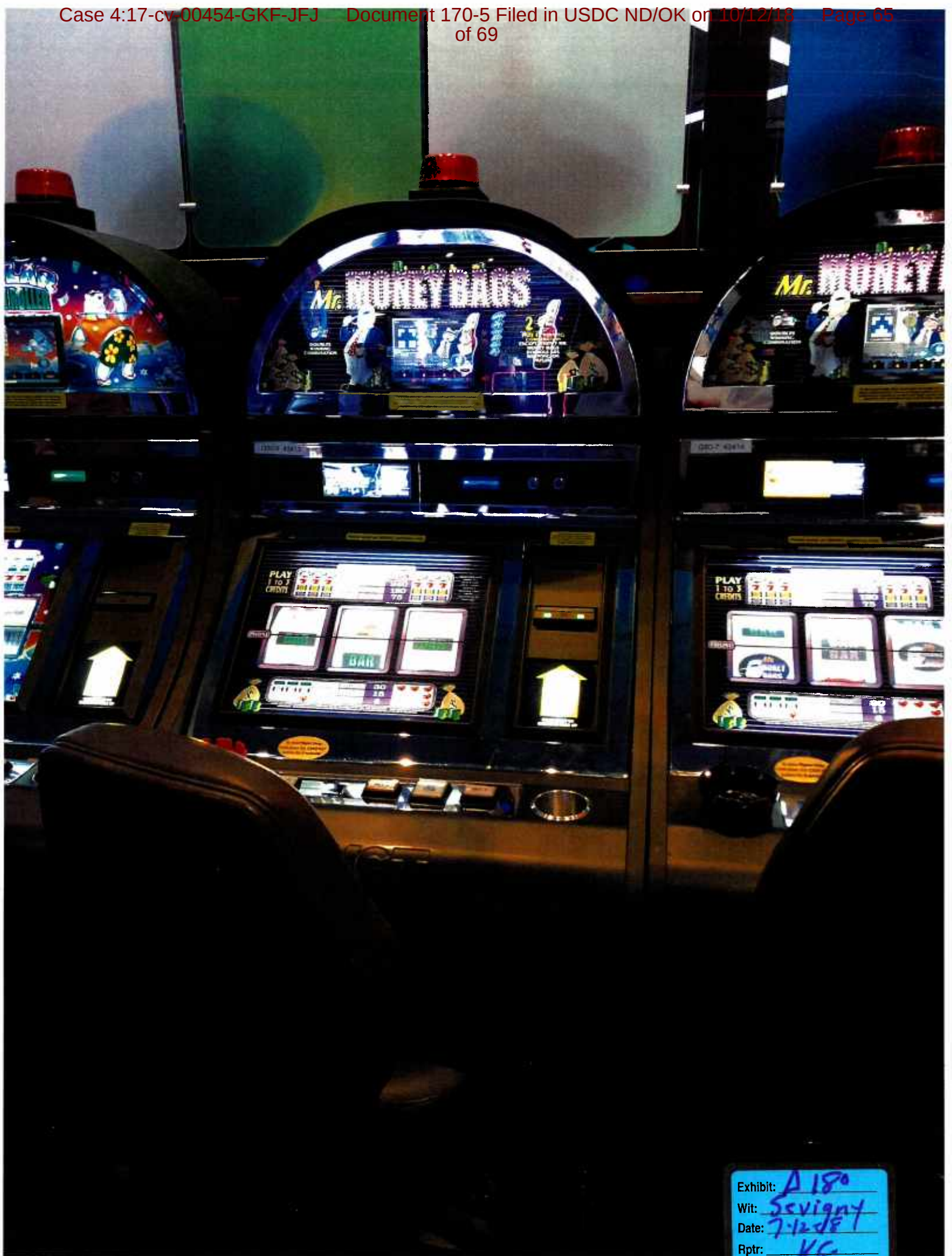


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# **EXHIBIT D**











